

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**DAVID DAHLGREN,
Hardin County, Iowa**

ADMINISTRATIVE CONSENT ORDER
NO. 2014-AFO-**20**

TO: David Dahlgren
304 1st Avenue NE
Clarion, Iowa 50525

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and David Dahlgren for the purpose of resolving issues regarding Mr. Dahlgren's failure to be a certified manure applicator. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: Relating to legal requirements:

Trent Lambert, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 712/243-1934

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. On December 16, 2013, Trent Lambert, DNR Field Office 2 environmental specialist senior, and Dan Bratrud, DNR Field Office 2 environmental specialist, responded to a manure spill west of Buckeye, Iowa. The spill was called in by Aksel Nielson. The field office personnel noted that a tractor and side-dump trailer left the roadway and spilled approximately 20 tons of poultry manure in the median of a highway intersection. The tractor-trailer and driver were no longer on site, but Mr. Nielson was present. Mr. Nielson explained that David Dahlgren was the driver and had been transported to the hospital. Mr. Nielson stated that he was hauling manure from the Benson Egg Ltd. Facility and he had hired Mr. Dahlgren to assist him. Mr. Nielson stated that although he hired Mr. Dahlgren to work for him that Mr. Dahlgren was operating under his own manure applicator certification. Mr. Nielson continued to manage the spill clean-up.

2. On December 17, 2013, the field office personnel returned to the site to ensure that the clean-up had been completed. They determined that Mr. Nielson had done a thorough job and no further clean-up action was required. Also on this date, Mr. Lambert reviewed Mr. Dahlgren's certification status and determined that his certification expired due to non-payment of the required fees. Mr. Dahlgren attended the manure application certification continuing education class on September 25, 2013, but the required fees were never submitted.

3. On December 18, 2013 and January 7, 2014, Mr. Lambert tried to contact Mr. Dahlgren by telephone. He left Mr. Dahlgren messages to call him with each call.

4. On January 14, 2014, DNR issued a Notice of Violation letter to Mr. Dahlgren for failing to be properly certified to transport manure.

5. In October 2012, DNR Field Office 3 discovered Mr. Dahlgren hauling manure without being properly certified. The fees were submitted one week after DNR Field Office 3's investigation and no further action was taken.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 459.315(2) and 567 IAC 65.19(1) state that a commercial manure service or a commercial manure service representative shall not transport, handle, store or apply dry or liquid manure to land unless the person is certified. Each person who operates a manure application vehicle or equipment

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must be certified individually. During DNR Field Office 2's investigation, it was determined that Mr. Dahlgren was not a certified to be hauling manure. The above-mentioned facts indicate a violation of these provisions.

V. ORDER

THEREFORE, the DNR orders and Mr. Dahlgren agrees to do the following:

1. Mr. Dahlgren shall comply with manure applicator certification requirements in the future and shall be properly certified prior to handling, transporting or applying manure; and
2. Mr. Dahlgren shall pay an administrative penalty of \$3,000.00 in accordance with the following payment plan. If any of the payments are not received in accordance with the plan, the remaining portion of the penalty shall be due immediately.

\$750.00 due September 15, 2014; \$750.00 due March 15, 2015;
\$750.00 due December 15, 2014; \$750.00 due June 15, 2015.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Dahlgren gained an economic benefit of transporting manure without being certified. Mr. Dahlgren was able to delay or avoid the cost of becoming a certified manure applicator. This

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amount is estimated to be \$225.00. Based on the above-factors, \$225.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The manure applicator certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly. Mr. Dahlgren's failure to be properly certified threatens the integrity of the water quality program. Therefore, \$1,775.00 is assessed for this factor.

Culpability – Mr. Dahlgren has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. The manure applicator certification program and its requirements have been widely publicized throughout the animal feeding industry. Additionally, Mr. Dahlgren had previously been found transporting manure without being properly certified. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Dahlgren. For that reason Mr. Dahlgren waives his rights to appeal this administrative consent order or any part thereof.

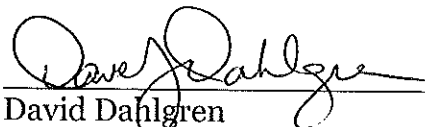
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 17th day of
September, 2014.


David Dahlgren

Dated this 9 day of
September, 2014.

Kelli Book, Trent Lambert at Field Office 2, EPA, VIII.D.4

RECEIVED

SEP 12 2014

IDNR AIR QUALITY